U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 03 127 50314 Office: VERMONT SERVICE CENTER Date: AUG 24 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mark Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a research chemist at Advanced Technology Materials, Inc. (ATMI). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. Counsel asserts that the petitioner qualifies for classification as an alien of exceptional ability in the sciences. The petitioner, however, readily qualifies for classification as a member of the professions holding an advanced degree. The more involved process of determining eligibility as an alien of exceptional ability would serve no useful purpose here; it would neither make any further benefit available to the petitioner, nor would it inherently improve the chances of approval of the waiver request. Therefore, the sole substantive issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel discusses the petitioner's work:

> Today, the process known as chemical vapor deposition (CVD) is one of the cornerstones of modern technology. The CVD process has become crucial for the microelectronics industry . . . and the compound semiconductor industry, as well as for materials used in integrated-circuit interconnects and plugs. Materials that can be deposited include copper, aluminum, tungsten, metal silicides, molecular organic conductors, carbons, diamond, and hard and protective coatings. . . .
>
> [The petitioner's] research with ATMI centers around employing his expertise in CVD to further ATMI's goal of materials development for advancing semiconductor process efficiency. . . .
>
> The Petitioner's research at the University of Tennessee centered around the synthesis and characterization of novel group IV, V and VI metal amides, imides and silyl complexes being CVD . . . precursors used widely in advanced microelectronic materials. . . . The Petitioner also performed research analyzing the structures of tailored hybrid inorganic-organic materials that are used for the treatment and disposal of toxic metal ions from wastes at and around many U.S. Department of Energy sites. . . .
>
> [The petitioner's] achievements are cited by national and international experts. As of the date of this writing, there are 24 scientific articles in Chinese . . . and international journals . . . citing his results.

The petitioner submits a list of 25 articles that are said to cite his work. He submits copies of a small number of these articles, and a list of the remaining articles. The source of the list is not shown. Therefore, the list amounts, in essence, to a claim rather than actual evidence of citation. Of the 25 citations, 12 are self-

citations by the petitioner and/or his co-authors. The 25 claimed citations are divided among six articles; the highest number of claimed citations for any one article is 14, nine of which are self-citations by the petitioner and/or his co-authors.

Several witness letters accompany the initial filing. Most of the witnesses have worked with the petitioner at the University of Tennessee, where the petitioner earned his doctorate. For instance, Professor [redacted] who supervised the petitioner's studies, lists the petitioner's achievements:

> (1) *Discovery of an Unusual Exchange between Alkyl-Alkylidene-Alkylidyne Ligands.* This discovery was the first time that this chemistry was observed, although the exchange had been speculated to exist for some time. . . . Our subsequent research led to further understanding of the unusual chemistry including the exchange kinetics. . . .
>
> (2) *Observation of an Unexpected Migration of a Silicon-Containing Group in a Metal Complex.* The migration of the silicon-containing group in the presence of oxygen points to previous[ly] unknown chemistry. [The petitioner] also observed an unusual reaction of oxygen with another metal complex. The chemistry that [the petitioner] developed may find applications in the formation of microelectronic gate materials. . . .
>
> (3) *Synthesis and Characterization of New Metal Complexes.* [The petitioner] has prepared and characterized several new compounds that may find applications in the formation of microelectronic diffusion materials. . . .
>
> (4) *Determination of X-ray Crystal Structures.* [The petitioner] has been the student operator . . . for the X-ray diffractometer in our group. . . . [The petitioner's] work contributed to our studies of the reaction pathways in the formation of diffusion barriers in copper-based new generation of microelectronic devices.

Ngee Sing Chong, an assistant professor at Middle Tennessee State University, "came to know [the petitioner] while attending a conference sponsored by the National Science Foundation at University of Tennessee. I am very intrigued by his exceptional work on organometallic materials and . . . CVD precursors." Dr. [redacted] asserts that the petitioner has made "outstanding contributions to the field of materials research," and that the petitioner's "research work on CVD composites has a potentially profound impact on the commercialization of new microelectronic devices and the development of defense-related weapon systems." With regard to the petitioner's specific contributions, Dr. [redacted] states that the petitioner "solved numerous crystal structures, including structures of organometallic compounds for treatment of toxic metal wastes at the Department of Energy facilities, using X-ray diffraction; and trained users in the operation of research instruments and edited a users' operational manual."

[redacted], senior scientist at the National Renewable Energy Laboratory, Golden, Colorado, who states that he first met the petitioner at a 2001 conference, states that the petitioner "has made significant, original contributions to the fields of organometallic chemistry and chemical vapor deposition," but he does not elaborate on what those contributions are or why they are especially significant. None of the witnesses represent ATMI or discuss his work there.

The director denied the petition, concluding (among other things) that the petitioner has not shown that his work is national in scope. We have held, however, that scientific research at major institutions is inherently national in scope, because the results are disseminated nationally (and internationally) through publications

and conferences and because the findings of such research tend to apply universally rather than only locally. We therefore withdraw the director's finding that the petitioner's work lacks national scope.

The director indicated that the range of witness letters and the frequency of independent citation of the petitioner's work are not sufficient to show that the petitioner's accomplishments in his field are at a level that would warrant the special benefit of a national interest waiver. The director determined that the record contains no documentary evidence to show that the petitioner's work has had an especially significant impact on his field of expertise, and that the petitioner's reputation is primarily confined to institutions where he has worked.

On appeal, counsel states that "the number of subsequent research papers citing the Petitioner's then-existing work has more than tripled, to 79 citations," about half of which, counsel acknowledges, are self-citations. As with the previously claimed citations, the petitioner submits actual documentation of only a small number of citations. This unattributed list does not have the same weight as an official listing from a citation index or (at least partial) copies of the citing articles; the list is, essentially, an unsubstantiated claim.

Counsel discusses recent work by the petitioner, including what counsel describes as "a long-[a]waited breakthrough . . . on the implementation of carbon-doped oxides (CDO) in the chip-making process." The record contains no documentation about the petitioner's most recent work, and the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, much of the newly discussed work appears to have taken place after the petition's filing date. For example, counsel identifies three patent applications, all of which were filed after the March 2003 filing date. This work cannot retroactively demonstrate that the petitioner was already eligible at the time of filing, as required by *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). If the petitioner desires consideration of his most recent work, then the proper course of action would be the filing of a new petition. Indeed, CIS records show that a petitioner has filed a new petition on the alien's behalf, and that the new petition was approved on April 28, 2005. The alien's application for adjustment of status (receipt number EAC 05 150 50046), based on that approval, is already pending. Approval of a national interest waiver at this point would neither expedite, nor increase the chances for approval of the alien's adjustment application.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.